

Sri Krishan Alias Pandit

Vs

State of Uttar Pradesh

Criminal Appeal Nos. 516 & 817 of 1990

(K. Jayachandra Reddy, S. C. Agarwal JJ)

10.09.1990

ORDER

1. Leave granted.

2. On the material now placed, it has been satisfactorily proved that the accused Sri Krishan Pandit, on the date of commission of the offence was nearing about 14 years. Without proper determination of his age, both the courts have convicted him under Section 302 and sentenced to life imprisonment.

3. The question is whether the sentence could be sustained? The sentence, in our opinion, cannot be sustained in view of the mandatory provisions of Sections 27 and 33 of U.P. Children Act, 1952 (Act 1 of 1952). Section 27 reads :

"27. Sentence that may not be passed on child : Notwithstanding anything to the contrary contained in any law, no court shall sentence a child to death or transportation or imprisonment for any term or commit him to prison in default of payment of fine.

Provided that a child who is 12 years of age or upwards may be committed to prison when the court certifies that he is not fit to be sent to an approved school and that none of the other methods in which the case may legally be dealt with is suitable."

Section 33 reads as follows :

"33. Where a child charged with any offence is tried by any court, and the court is satisfied of his guilt the court shall, before passing orders, take into consideration the manner in which, under the provisions of this or any other Act enabling the court to deal with the case, the case should be dealt with, namely, whether -

(a) by discharging the offender after due admonition; or

(e) by releasing the offender on probation of good conduct; or

(g) by ordering the offender to pay a fine."

4. The accused in this case is a child as defined under Section 2(4) and he cannot, ought not to have been sentenced to transportation or imprisonment for life as per Section 27 and, he could, however, be dealt with under Section 33 of U.P. Children Act, 1952 (Act 1 of 1952).

5. The question of application of sub-section (a) to Section 33 does not arise since the accused has already been convicted. He cannot now be discharged with admonition. He could be dealt with either under sub-section (e) or (g). Similar view was taken by this Court in Bhoop Ram v. State of U.P. [(1989) 3 SCC 1] where conviction was sustained, but sentence, was quashed.

6. In the instant case, we are of the opinion that the accused may be given the benefit of the probation of good conduct. We, accordingly, direct that the conviction be sustained and the accused be released on good conduct upon executing a bond to the satisfaction of the Sessions Judge, Jaunpur.

7. Having considered the gravity of the offence, we also direct that the accused shall pay a fine of Rs 2000 which shall be recovered and paid to the members of the deceased family.

8. The appeals are accordingly disposed of.

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